

1 (Change of reporter)

2 He detailed the extensive investigations that he
3 provided and he testified as to the facts, as well
4 as the findings and conclusions, of his
5 investigation. I hazard to say that there is or
6 there are a few persons more qualified than
7 Mr. Lazare to perform an investigation of a
8 corporation and its activities, to find or to
9 identify facts, and to make findings and conclusions
10 related to that investigation.

11 I would note on the other side of the
12 coin that we have testimony in this case from
13 Mr. Merswa (phonetic) and a variety of other
14 witnesses that reach, to my mind, shocking and
15 unsupported conclusions on the issue in particular
16 of concealment and/or deceit.

17 Mr. Lazare also offers opinion
18 testimony on this subject matter, and if it were the
19 case that Mr. Lazare, who has decades of experience
20 in this area in the investigation of these types of
21 matters, based specifically on what he stated in his
22 direct testimony as the foundation for what he's

1 offering and it is equally true that the other

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1 testimony presented in this matter by persons far
2 less qualified should be stricken.

3 This is just a way of saying Mr. Lazare
4 is wholly and completely qualified. He has detailed
5 the investigations that he has performed. He has
6 detailed the analysis that came out of that
7 investigation. He has provided his opinions. This
8 is proper expert testimony under Illinois law and
9 should be allowed.

10 MR. PERA: I'll be very brief. I want to pick up
11 on something that Tom said. He said these types of
12 matters. There is absolutely no showing that Scott
13 Lazare has any knowledge of gas utility issues, the
14 Illinois Commerce Commission, or anything else
15 that's directly related to this case. Can he
16 conduct a fact investigation? Of course, but that
17 doesn't transform him into an expert witness for the
18 Commission on the issues involved in this case on
19 the basis of what's been submitted.

20 If NICOR blew it in terms of laying a
21 foundation, that's their problem. If NICOR thought
22 that all they had to say was we better put Scott

1 Lazare on and then we will pass muster, and it
2 doesn't, because it doesn't, that's their problem,
3 but you have to take as critical an eye on this as
4 you did on the other witnesses.

5 There is just no showing, your Honors,
6 that he has any idea of what virtual storage
7 accounting is or that his background or experience
8 by way of example lends itself to know anything
9 about virtual storage.

10 If NICOR had an issue about the
11 foundation that was laid for the admissibility of
12 the testimony of the other experts, then they should
13 have raised it, but -- and they raised everything
14 else under the sun, which is their right, but they
15 didn't raise that because there isn't an issue as to
16 Mr. Merswa's qualifications to render an opinion.
17 They may not like the opinion, but he's qualified.
18 Mr. Ephrain (phonetic) is qualified. The staff
19 witnesses are qualified. I'll stipulate that
20 Mr. Feingold (phonetic) is qualified. There's no
21 showing that Mr. Lazare is qualified, period, and he
22 has to be stricken or barred. They can't redo it,

1 so --

2 MR. ANDREOLI: Your Honor, at Line 12 of
3 Mr. Lazare's direct testimony he indicates his
4 extensive experience involving white collar fraud.
5 Mr. Merswa states in his testimony repeatedly that
6 the company has engaged in a fraud. If it is
7 Mr. Pera's position that Mr. Lazare is less
8 competent than Mr. Merswa to provide testimony to
9 this subject area, I find that to be a position with
10 little merit.

11 MR. PERA: They had an issue about that, your
12 Honors, that the time has come and gone to raise it.

13 COMMISSIONER DOLAN: All right. We'll take that
14 under advisement, so you want to move on to
15 Mr. Fisher.

16 MR. PERA: Sure. I'm not sure, your Honors, how
17 you want to proceed. There isn't a lot with
18 Mr. Fisher. If you want to look at it and follow
19 along or, you know, I don't like to make an argument
20 in a vacuum. I don't mean this to be --

21 COMMISSIONER HAYNES: We'll follow along.

22 MR. PERA: Well, okay, because I was going

1 to say if you want to take a look at it -- you've
2 obviously spent a whole lot of time on the other
3 witnesses I think in general, and the attorneys
4 appreciate it, in the substance of your rulings --
5 if you want to look at it and do it later or get it
6 over with now --

7 COMMISSIONER HAYNES: We'll look at it, but we'll
8 rule later.

9 MR. PERA: Okay. I'm sorry. I think a lot of
10 the objections speak for themselves though. I guess
11 I'd answer the Questions 43 and 44, there's no
12 foundation was laid for Mr. Fisher's opinion, the
13 same objection regarding lack of foundation with
14 regard to Lines 81 and 84.

15 MR. ROONEY: If you want a response on that, your
16 Honors, in terms of foundation, Mr. Fisher is the
17 chairman, CEO of NICOR, Inc., as well as NICOR Gas.
18 At the time in question, as parties obviously know,
19 Mr. Fisher was present at particular meetings where
20 decisions were made that directly relate to
21 TCGB(sic).

22 MR. PERA: That may well be, your Honors. It's

1 the same problem with Lazare. They don't lay a
2 foundation. There's no foundation laid, you know,
3 and you have to have a foundation laid, and they
4 didn't lay one, and it's the same thing with Lines
5 41 to 84. It talks about -- it's a similar
6 argument. They don't lay a foundation for the basis
7 for his opinion. I don't understand it.

8 MR. ROONEY: I guess the interesting thing we
9 have here is that what Mr. Fisher's responding to is
10 the speculation, in my view, of certain staff
11 intervenor witnesses of what they think transpired
12 and here you have an actual individual who's at the
13 event in question and providing direct personal
14 knowledge about information and different decision
15 points during the course of the process, so I think
16 it's directly relevant and goes directly to the fact
17 that he was the chairman/CEO of the company. He was
18 at the meeting in question when decisions were made.

19 MR. PERA: Just moving on then on the hearsay
20 lack of foundation issues, on Page 3, Lines 49 to
21 53, talks about "I also understood." It's
22 apparently hearsay and there's no foundation.

1 Who did he understand it from? What
2 was the context? Who told him? He doesn't get the
3 benefit that an expert gets in terms of relying on
4 hearsay.

5 MR. ROONEY: Which line is that, Mark?

6 MR. PERA: That was Lines 49 and 53. "I also
7 understood that the gas supply personnel" on 51, "It
8 was my understanding and expectation." There's no
9 foundation. You just can't -- these guys can't just
10 walk in and say anything. They're fact witnesses.

11 MR. ROONEY: Mr. Fisher that is his
12 understanding. If Mr. Pera wants to probe him as to
13 how he came to that understanding, that's certainly
14 his opportunity during examination, but the fact of
15 the matter that he's the CEO and chairman of the
16 company and it's his understanding how the company
17 would act. At the time he was one of -- the senior
18 officers. He was the senior officer and one of the
19 seniors of the group that made the decision to go
20 forward with the program.

21 MR. PERA: All right. Moving on to 65 through
22 68, he talks about a meeting that took place on

1 November 29, 1999, not once does he say he was
2 present at this meeting, not once. He doesn't put
3 himself there. We don't know if he was there, but
4 he talks about what transpired there. There is no
5 foundation laid.

6 It was attended by a variety of senior
7 management and rates and gas supply personnel. Tell
8 me where it says I was there. Where? There's no
9 foundation.

10 MR. ROONEY: I believe in the November 29th
11 meeting that Mr. Pera's referencing, again, there's
12 other information established about who was at the
13 meeting when it was taking place. If you want to
14 probe Mr. Fisher on his memory at that point in time
15 and whether he was there --

16 MR. PERA: That's not our obligation here. We
17 don't have to cross-examine him to make his case.

18 MR. ROONEY: He's testifying first-hand
19 knowledge. He's not testifying as other witnesses
20 are about trying to put strands of DNA together to
21 come up with what they believed happened.

22 Mr. Fisher's testifying as to what

1 actually, in his mind, happened as a member of the
2 company, not only a member of the company, the
3 leader of the company and senior officer involved in
4 the discussions that related to TGCB (sic).

5 MR. PERA: Your Honors, he's talking in substance
6 about what transpired in a meeting and there is
7 showing that he was there. It was not our
8 responsibility to cross-examine their witnesses,
9 just like with Lazare, to help them lay the
10 foundation for the introduction of their testimony.

11 MR. ROONEY: The testimony states it was attended
12 by a variety of different senior management. Again,
13 I submit there is no one more senior than Mr. Fisher
14 at the company at the time in question.

15 MR. PERA: Then why didn't they say he was there?

16 MR. ANDREOLI: Quibbling.

17 MR. PERA: Quibbling?

18 COMMISSIONER HAYNES: Let's move on to the next
19 objection.

20 MR. PERA: Quibbling, speculation.

21 Page 3, Lines 53 to 55, he says -- he's
22 talking about the LIFO layers -- "While I do not

1 recall specific conversations with employees during
2 which I communicated this view, I believe that it is
3 likely that I would have done so." That's
4 speculation. There is lack of foundation.

5 MR. ANDREOLI: Mr. Fisher knows what his state of
6 mind was at the time. He'll testify to the best of
7 his recollection given the opportunity to do so.

8 MR. PERA: So if Mr. Fisher can testify to state
9 of mind, but other witnesses aren't allowed to --

10 MR. ROONEY they're testifying to someone's
11 else's state of mind. See, I think that's the
12 distinction.

13 MR. PERA: Your Honors, please. While I do not
14 recall what happened, I think this is what happened.
15 I don't know.

16 MR. ANDREOLI: It's rather famous testimony along
17 those lines.

18 MR. PERA: Oh, my gosh. Page 3, Lines 57 through
19 59 we believe that's a legal conclusion. The
20 company always believed that the LIFO layers are
21 the property of the company. This ownership
22 includes the unrealized value. Apparently it goes

1 to state of mind. Objection. This ownership
2 includes the unrealized value. There is a
3 difference between the book value and market value
4 of both LIFO layers.

5 MR. ROONEY: Your Honors, again, I don't think
6 Mr. Fisher's saying that absolutely positively it
7 was our legal asset under the law. He said that it
8 was the company's belief that it was their asset.
9 It was a state of mind.

10 MR. PERA: Okay. We are on the letter.

11 MR. ROONEY: Direct and surrebuttal.

12 MR. PERA: Okay. Page 3 -- I'll keep this brief.
13 I couldn't restrain myself with regard to
14 Mr. Fisher.

15 On Page 3, Line 61 through 65. We
16 think it's all hearsay. Particularly, I ask you to
17 focus on 61, 62, and 63. In all of my discussions
18 with the PBR (sic) group the liquidation of the LIFO
19 gas layers were never even mentioned.

20 It's our belief that's hearsay.
21 Discussions with who? There's a lack of foundation.
22 Who did he talk to? When did he talk to them? Who

1 was it? It's just too loose for direct testimony.

2 There's no foundation.

3 MR. ROONEY: I guess our response would be he
4 provided input to the PBR. He testified precisely
5 his participation, and what he provided to that
6 group, and what that group discussed, his first-hand
7 knowledge about that event.

8 MR. PERA: You know what, I wouldn't mind even
9 cutting this short. I'll rest on what we have
10 submitted. I have confidence in you guys. I'm not
11 trying to be -- you guys looked through the other
12 stuff I thought with the appropriate amount of
13 diligence and I don't think you need to hear from
14 us.

15 COMMISSIONER DOLAN: We'll review it all and
16 we'll issue -- we'll issue a ruling similar to what
17 we did on the record for these.

18 MR. PERA: That's fine.

19 MR. ANDREOLI: Thanks, Mike.

20 MR. PERA: The only other issue I think that is
21 out there, your Honors, I'm not sure we are going to
22 argue today, is we filed a motion to compel

1 yesterday and my only -- and data responses that we
2 got from NICOR and we don't have to argue it today,
3 but I would like to setup a framework where we get a
4 ruling before the 19th, and whether we rest on the
5 written submissions, because there's no time to do
6 an oral presentation, I'm okay with that, but it
7 goes to the issue -- just so you know the context,
8 we asked for information regarding what NICOR paid
9 their experts -- their testifying experts to proffer
10 testimony in this case, Feingold (phonetic), Moretti
11 -- not Moretti --

12 MR. ROONEY: Barren (sic).

13 MR. PERA: -- Barren (sic), Lazare, KPMG.
14 There's outside attorneys that NICOR hired that are
15 representing some of the adverse witnesses. We want
16 to know what they paid. NICOR's objected. They
17 just got the motion yesterday. I want to give you
18 the context.

19 MR. ROONEY: And to stay in the context, we
20 responded that, yes, they have been paid. We think
21 everything else -- and we go on from there. We want
22 to establish a quick briefing schedule for it, or

1 howe ever you want to address it, your Honors,
2 we'll leave it entirely in your hands.

3 MR. ANDREOLI: Mark, you need a week. When did
4 you want it?

5 MR. PERA: Well, I think we need it before the
6 19th, so I would say a week from Friday if we
7 prevail, so, you know --

8 MR. ANDREOLI: We are happy to file a quick
9 response. In fact, I wonder --

10 COMMISSIONER HAYNES: When do you file that by?

11 MR. ANDREOLI: We could try Friday, but Monday
12 would be better.

13 COMMISSIONER HAYNES: So the 12th?

14 MR. ANDREOLI: Yes.

15 MR. PERA: If we respond, we'll respond by
16 Wednesday and we may not respond. We may just if
17 that's --

18 COMMISSIONER HAYNES: The 12th and 14th and we'll
19 issue a ruling by Friday, the 16th.

20 MR. PERA: Did you get a copy because I have an
21 extra copy here --

22 COMMISSIONER HAYNES: I have a copy.

1 MR. PERA: -- if you want it?

2 COMMISSIONER DOLAN: They were e-mailed to us
3 this morning.

4 MR. PERA: I just didn't want to slow up the
5 process. I think that's it.

6 MR. KELTER: I have a question.

7 COMMISSIONER HAYNES: Okay.

8 MR. KELTER: The question relates to Mr. Stroebel
9 (phonetic) that probably it might relate to other
10 witnesses as well.

11 My understanding the way the law works
12 is, for instance, if Mr. Stroebel was excluded as a
13 witness, we would like an opportunity to make an
14 offer of proof for the record, and my question is we
15 would like to call Mr. Stroebel as a witness under
16 the guise of making an offer of proof.

17 MR. ROONEY: We are not prepared to respond to
18 that today. If they want to provide some authority
19 as to how he can call particularly Mr. Stroebel in
20 his capacity as an attorney with privileged
21 information and in his role as general counsel, if
22 they want to make a motion on that, I think we would

1 like the opportunity to respond in kind.

2 MR. KELTER: That's not exactly how we would
3 frame the motion. The issue is we would be making
4 an offer of proof and how to go about doing that
5 once you rule that a witness has been excluded.

6 COMMISSIONER DOLAN: Mr. Kelter, you bring that
7 up for the first time. Why don't you, if you would,
8 put something in writing so they can have an
9 opportunity to respond to it and we'll rule that
10 way.

11 MR. KELTER: Okay.

12 MR. ANDREOLI: Thank you, your Honor.

13 COMMISSIONER HAYNES: I think there's also a
14 staff motion for subpoena that came in this morning.

15 MR. REICHART: That's right.

16 COMMISSIONER HAYNES: Is NICOR going to be
17 objecting to this?

18 MR. ROONEY: They directed their subpoenas to the
19 individuals. We're not making an objection to them.
20 I can't tell you whether those individuals may try
21 to object. NICOR is not.

22 MR. ANDREOLI: They're not employees, your Honor

1 s.

2 COMMISSIONER DOLAN: Okay. Is there anything
3 else to be discussed today?

4 MR. ROONEY: Just from a -- maybe an
5 informational standpoint for the judges is that we
6 discussed among ourselves prior to the hearing this
7 morning and we are going to endeavor to work out a
8 schedule of events and witness scheduling and try to
9 get that to you by later next week, so, unless you
10 have something in mind, we are going to try to work
11 it out, so we'll get it to you so you know what our
12 proposal is for presentation over the following two
13 weeks.

14 COMMISSIONER HAYNES: That's fine.

15 MR. ROONEY: I'm sorry to burden you further.
16 Are we planning to be -- you know, we'll be in this
17 room or what room we might have?

18 COMMISSIONER HAYNES: I think that we'll have
19 this room unless there's Commission meetings.

20 MR. PERA: How do you normally, you know, conduct
21 a day? I mean, do you plan to start at 9 and work
22 till 5, or 5:30, or what?

1 COMMISSIONER HAYNES: We normally start at 10,
2 but we definitely can start at 9 if this is going to
3 take two weeks or a possibility of it taking longer
4 than two weeks we should start at 9.

5 MR. PERA: Well, in light of some of your
6 rulings, it hasn't eliminated some of the witnesses.
7 We can talk about that.

8 COMMISSIONER HAYNES: We can start at 10 on
9 Monday and then from there then on go at 9.

10 MR. PERA: Then how late do you usually go?

11 COMMISSIONER HAYNES: That all depends.

12 MR. PERA: Okay. Because I have to schedule and
13 four kids running around, would you go past 6 as a
14 matter of course?

15 COMMISSIONER HAYNES: I did a couple of weeks
16 ago. So, yes, I suppose we could.

17 MR. PERA: Okay.

18 COMMISSIONER DOLAN: John, just to answer your
19 question, there's a pre-bench on Tuesday, on
20 Wednesday the 20th and 21st, and then there's the
21 regular open meeting on the 27th also. There is a
22 possibility that we won't have this room for those

1 three days.

2 MR. ROONEY: Okay. Going back to in light of
3 your rulings you made today and in light of the
4 rulings you are going to hold until you get back to
5 them, would you like us to have prepared then
6 revised testimony based on what's in, what's out,
7 and then have separately a complete version for
8 offers of proof purposes? I'm just thinking right
9 now there's a lot of testimony in the record or that
10 could be in the record where there's going to be
11 different pieces stricken. I don't know how you
12 want to handle that, your Honors.

13 COMMISSIONER HAYNES: Well, maybe we'll have
14 clean copies filed after the hearings are done,
15 because a lot of testimony could still be -- has
16 potential to be stricken, and so for now we'll deal
17 with the full copies.

18 MR. ROONEY: Great. Thank you.

19 MR. KELTER: You know, John, I don't know if you
20 were getting to this at all, but some of us may be
21 bringing over large quantities of documents that may
22 be used as exhibits and all that was -- that's part

1 of what you were getting to in terms of this room,
2 because I think we might want to discuss that a
3 little bit further so we all have the same
4 understanding.

5 MR. ROONEY: I guess in terms of quantity and
6 what we may be marching over here the 19th starting,
7 if there's a way that -- I don't know if you want
8 this on the record -- in terms of the judges can
9 maybe reserve this room, if not here, 808, or
10 something, so that rather than a caravan going back
11 and forth at the end of the day for all of us, it
12 might be helpful.

13 MR. KELTER: The other thing a lot of the
14 documents will be confidential documents, so we
15 should both be working under the same understanding
16 regarding how those would be treated; in other
17 words, can we leave the documents here overnight and
18 assume the doors are locked?

19 MR. ROONEY: I agree.

20 MR. KELTER: You know what I'm getting at.

21 COMMISSIONER HAYNES: We'll consider this and try
22 to work out something.

1 record?

2 MR. ROONEY: Thank you very much appreciate, your
3 Honors. Thank you.

4 COMMISSIONER HAYNES: Thank you. We're continued
5 until the 19th at 10 a.m.

6 (Whereupon, this matter
7 is continued to
8 April 19, 2004 at
9 10 o'clock a.m.)

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No. 01-0705, 02-0067

& 02-0725

State of Illinois
ILLINOIS COMMERCE COMMISSION

(To be filed with the Chief Clerk)

MINUTES

Chicago, Illinois
April 8, 2004

Case No. 01-0705, 02-0067 & 02-0725

Subject: ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY

Reconciliation of revenues collected under
gas adjustment charges with actual costs
prudently incurred

ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
d/b/a NICOR GAS COMPANY

Proceeding to review Rider 4, gas cost,
prudent to Section 9-244(c) of the Public
Utilities Act

ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
d/b/a NICOR GAS COMPANY

Reconciliation of revenues collected under
gas adjustment charges with actual costs
prudently incurred

1 HEARD BY: MS. LESLIE HAYNES and
2 MR. GLENNON DOLAN,
ADMINISTRATIVE LAW JUDGES

3 APPEARANCES AND ADDRESSES:

4 (SEE ATTACHED SHEETS)

5 DISPOSITION: Continued to April 12, 2004 at
6 10 o'clock a.m.

7 (None.)

8 REPORTED BY: SULLIVAN REPORTING COMPANY, by
Patricia Wesley

9 REMARKS: Orig to Commission
10 Pages (pgs)
Maloney /Wesley 22pgs

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1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS)
COUNTY OF COOK) SS:
3 CASE NUMBER: 01-0705, 02-0067 & 02-0725
TITLE: ILLINOIS COMMERCE COMMISSION - On Its Own
4 Motion vs. NORTHERN ILLINOIS GAS COMPANY

5 Reconciliation of revenues collected under
gas adjustment charges with actual costs
6 prudently incurred

7 ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
8 d/b/a NICOR GAS COMPANY

9 Proceeding to review Rider 4, gas cost,
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11 ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
12 d/b/a NICOR GAS COMPANY

13 Reconciliation of revenues collected under
gas adjustment charges with actual costs
14 prudently incurred

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16 I, KATHLEEN MALONEY and PATRICIA WESLEY, do
17 hereby certify that we are court reporters
18 contracted by SULLIVAN REPORTING COMPANY of
19 Chicago, Illinois; that we reported in shorthand the
20 evidence taken and the proceedings had on the
21 hearing on the above-entitled case on the 8th
22 day of April A.D., 2004; that the foregoing pages
are a true and correct transcript of our shorthand

1 notes so taken as aforesaid, and contains all of the
2 proceedings directed by the Commission or other
3 person authorized by it to conduct the said hearing
4 to be stenographically reported, dated at
5 Chicago, Illinois, this 8th day of April, A.D.
6 2004.

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Certified Shorthand Reporter

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